

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

KATHY ADKINS, *et al.*,

Plaintiff,

v.

Civil Action No. 3:11cv334

ENCORE CAPITAL GROUP, INC., *et al.*

Defendants.

**DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR
REASSIGNMENT OF ACTION TO DISTRICT JUDGE JAMES R. SPENCER**

Defendants, Encore Capital Group, Inc., Midland Funding, LLC and Midland Credit Management, Inc. (collectively, the "Midland Defendants"), by counsel, for their reply memorandum in support of their motion to reassign this matter to United States District Judge James R. Spencer, state as follows.

Plaintiffs begin their response to the Midland Defendants' motion stating they "express no opposition" to the requested reassignment of this case. (Memo. Resp. at 1). Plaintiffs' response could have (and should have) ended with that statement, which concerned the only relief requested in the Midland Defendants' motion, and whose outcome is required under binding Fourth Circuit authority. *See, e.g., Excel Indus. v. Eastern Express*, 1995 U.S. App. LEXIS 35183, at *1-2 (4th Cir. Dec. 14, 1995) (magistrate judge consent cannot constitutionally be grounded on a party's inaction or its lack of objection; express consent is required). Instead of ending their pleading there, however, Plaintiffs' counsel proceeds to set forth a litany of irrelevant misstatements.

As a threshold matter, Plaintiffs state that they cannot agree with the “view of the facts offered [by Defendants] in support of the withdrawal of their consent.” (Mem. Resp. at 1). Plaintiffs do not identify which of the entirely uncontroversial and documented facts set forth in the Midland Defendants’ one-page memorandum are somehow in dispute. More fundamental, however, is the fact that the Midland Defendants do not seek to “withdraw” their consent, as such consent was never expressly provided in a manner sufficient to ground magistrate jurisdiction in the first instance. *See, e.g., Excel Indus.*, 1995 U.S. App. LEXIS 35183, at *1-2.

Notwithstanding their lack of objection to reassignment, Plaintiffs also suggest that “all pre-trial management” be assigned to Magistrate Judge Dohnal going forward. (Mem. Resp. at 1). This decision is premature in light of the pending Motion to Sever filed by the Midland Defendants (Dkt. No. 20), as well as the ongoing discussions among counsel regarding possible voluntary severance and associated permutations. Moreover, consistent with practice generally in the Eastern District of Virginia, the Midland Defendants propose that the standard flexible approach to magistrate involvement be used in this case, with matters referred to the assigned magistrate judge whenever the Court feels that it is appropriate with respect to any non-dispositive matters.¹

Plaintiffs also make a number of misguided attacks on the Midland Defendants by reference to another pending action, *Gilbert James v. Midland Funding, LLC, et al.*, 3:11cv221 (REP). Given the irrelevance of such commentary, the Midland Defendants will not respond,

¹ Plaintiffs’ statement that all pre-trial matters should be assigned to Magistrate Judge Dohnal due to the fact that he has already overseen “multiple discovery disputes,” *see* Mem. Resp. at 1, finds no basis in reality. No such discovery disputes requiring the intervention of the Court have occurred in this action to date. Furthermore, Plaintiffs state that the Midland Defendants prematurely served discovery in this action in light of the parties’ agreement to stay such discovery for thirty days. (*See* Mem. Resp. at 2). However, counsel for the Midland Defendants readily agreed to stay the deadline for such objections and responses pending further discussions on this issue, including after the expiration of the supposed thirty-day stay. This fact, however, is conspicuously omitted by Plaintiffs in their briefing.

except to note that all of these allegations are both contested and belied by the record before the court in that action.

CONCLUSION

WHEREFORE, pursuant to the above authority, and due to Plaintiffs' lack of objection, Defendants, Encore Capital Group, Inc., Midland Funding, LLC and Midland Credit Management, Inc., by counsel, respectfully request that the Court enter an Order: (1) granting their Motion for Reassignment of Action to District Judge James R. Spencer; (2) reassigning this matter to Hon. James R. Spencer for all further purposes; and (3) granting Defendants such further relief that the Court deems appropriate.

**ENCORE CAPITAL GROUP, INC.,
MIDLAND FUNDING, LLC and
MIDLAND CREDIT MANAGEMENT, INC.**

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October 2011, I filed a true and correct copy of the foregoing on the Court's Electronic Case Filing System, which will send a notice of electronic filing to:

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